IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6893 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMESHBHAI MANABHAI CHAUDHARI

Appearance:

MR HARDIK C RAWAL for Petitioner

MR DR DHIMAR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/03/2000

ORAL JUDGEMENT

Learned advocate Mr. Raval is appearing for the petitioner and Learned advocat Mr. Dhimar is appearing for the respondent workman.

Rule, service of which is waived by Mr. Dhimar, the learned advocate appearing for the respondent workman. WIth the consent of the learned advocates for the parties, this matter is taken up for final hearing today.

In this petition, the petitioner challenges theaward passed by the labour court in Reference No. 63 of 1997 dated 30.9.1998 whereby the petitioner has ben directed to reinstate the respondent workman in service with continuity of service and without backwages. The facts leading to the filing of this petition, in short, are that the respondent was working as a conductor with thepetitioner. The respondent had remained absent from20.4.1996 to 2.6.1996 for which he was served with charge shet dated 12.6.1996 to which, the respondent had submitted no reply and, thereafter, departmental inquirywas held against him inwhich he was given full opportunity to defend th e case and,ultimately, after the inquiry, he was dismissed from service by order dated 8.7.1996 against which, the respondent workman filed aforesaid reference before thelabour court. The labour Court, after hearing thelearned advocates for theparties and also after considering the evidence on record, passed theimpugned award of reinstatement without back wages against which the petitioner has filed the present petition.

During the course of hearing,it was submitted by Mr. Raval, the learned advocaote appearing for the petitioner that the labour court has erred in not taking into consideration the past record of the respondent workman. He has submitted that in past, the respondent has commited in all 17 defaults outof which, five defaults pertain to absence for a long period without priorpermission of the competent authority andfor that, punishments were imposed in past upon the respondent and, therefore, according to him, beforegranting any reliefin favourof the workman, the labour court ought to have taken into consideration the past record of the respondent workman. According to Mr. Raval, the labour court should have imposed some punishment. On the other hand, learned advocate Mr.Dhimar appearing for the respondent workman has submited that the respondent has foregone the backwages for theintervening period from July,1994 to 30th September, 1998 which should be considered as sufficient punishment. Therefore, according to him, thelabour court has rightly denied the back wages for the intervening period and now this court shouldnot interfere with the same. However, ultimately, hehas left this aspect at the discretion of this Court.

On the facts and in the circumstances of the case, I am of the opinion that looking to the gravity of misconduct, some punishment is required to be imposed upon therespondent. I am also of the opinion that the denial of backwages cannot be considered as punishment since the same was foregone by the respondent at his own volition and therefore, over and above that, some more punishment is required to be imposed. I am of the opinion that looking to the misconduct, if one annual incrementof the respondent is ordered to be stopped withcumulative effect, same would met endsof justice. To that extent, the impugned award requires modification. Therefore, I pass the following order.

This petition is partly allowed.

The petition is partly allowed. The award passed by the labour court in Reference No. 64 of 1997 dated 30.9.1998 is modified as under:

The petitioner is directed to reinstate the respondent workman in service on his original post without back wages and with continuity of service. The petitioner is further directed to stop one annual increment of the respondent workman with cumulative effect.

The petitioner corporation is further directed to reinstate the respondent workman in service with continuity of service within one month from today and is also directed topay to the respondent workman full current wages with effect from 30.9.98 till the date of his actual reinstatement within six weeks from today. Rule is made absolute to the extent indicated hereinabove with no order as to costs.

29.3.2000. (H.K.Rathod,J.)

Vyas